

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STATE OF NEW YORK, :

Plaintiff, :

v. :

2:12-cv-06276 (JS) (SIL)

MOUNTAIN TOBACCO COMPANY, :
d/b/a KING MOUNTAIN TOBACCO :
COMPANY INC., and DELBERT :
WHEELER, Sr., :

Defendants. :
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x

DECLARATION OF PHILIP PILMAR

Pursuant to 28 U.S.C. § 1746, Philip Pilmar declares as follows:

1. I am an attorney admitted to practice before this Court and an associate at the law firm of Petrillo Klein & Boxer LLP, co-counsel to Defendant Mountain Tobacco Company, d/b/a King Mountain Tobacco Company Inc. (“King Mountain”). I respectfully submit this Declaration in support of King Mountain’s January 29, 2016, motion for summary judgment.

2. Attached hereto as Exhibit 1 is a true and correct copy of Defendant King Mountain’s Second Local Rule 56.1 Statement, dated September 11, 2015.

3. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff State of New York’s Response to Defendant King Mountain’s Second Local Rule 56.1 Statement, dated October 19, 2015.

4. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiff State of New York’s Statement of Undisputed Material Facts (Mountain Tobacco Company d/b/a/ King Mountain Tobacco Company Inc.), dated July 30, 2015.

5. Attached hereto as Exhibit 4 is a true and correct copy of Defendant King Mountain's Local Rule 56.1 Counterstatement, dated September 11, 2015.

6. Attached hereto as Exhibit 5 is a true and correct copy of Permit No. TP-WA-15000, Dep't of Treasury, Alcohol & Tobacco Tax & Trade Bureau

7. Attached hereto as Exhibit 6 is a true and correct copy of the May 8, 2015, deposition of Delbert Wheeler, Sr.

8. Attached hereto as Exhibit 7 is a true and correct copy of the July 30, 2014, deposition of Jay Thompson.

9. Attached hereto as Exhibit 8 is a true and correct copy of the July 29, 2014, deposition of Yancey Black.

10. Attached hereto as Exhibit 9 is a true and correct copy of the transcript of the January 8, 2016, Motion Conference in this action.

11. Attached hereto as Exhibit 10 is a true and correct copy of the August 13, 2014, deposition of Andrew Scala.

12. Attached hereto as Exhibit 11 is a true and correct copy of an ERW Wholesale Bill of Lading, dated December 1, 2012 (bates stamped NY000204-206).

13. Attached hereto as Exhibit 12 is a true and correct copy of a New York State Incident Report, dated December 3, 2012 (bates stamped NY000370-372).

14. Attached hereto as Exhibit 13 is a true and correct copy of New York State Department of Taxation and Finance Notice of Determination Number L-038986040, dated December 20, 2012.

15. Attached hereto as Exhibit 14 is a true and correct copy of the Division of Taxation Answer, *In the Matter of the Petition of King Mountain Tobacco Company*, DTA # 825886 (N.Y. Division of Tax Appeals), dated December 4, 2013.

16. Attached hereto as Exhibit 15 is a true and correct copy of a July 10, 2014, Letter from ALJ Herbert M. Friedman *In the Matter of the Petition of King Mountain Tobacco Company*, DTA # 825886 (N.Y. Division of Tax Appeals).

17. Attached hereto as Exhibit 16 is a true and correct copy of a Stipulation for Discontinuance of Proceeding, *In the Matter of the Petition of King Mountain Tobacco Company*, DTA # 825886 (N.Y. Division of Tax Appeals), dated October 23, 2014.

18. Attached hereto as Exhibit 17 is a true and correct copy of an Order of Discontinuance, *In the Matter of the Petition of King Mountain Tobacco Company*, DTA # 825886 (N.Y. Division of Tax Appeals), dated November 19, 2014.

19. Attached hereto as Exhibit 18 are true and correct copies of four invoices, one dated December 17, 2010 (bates stamped KMTA000001), one dated August 1, 2011 (bates stamped KMTA00463), one dated August 12, 2011 (bates stamped KMTA00487), and one dated October 18, 2011 (bates stamped KMTA00533).

20. Attached hereto as Exhibit 19 is a true and correct copy of an invoice billed to Valvo Candies, dated June 29, 2010 (stamped as paid May 20, 2010) (bates stamped KMTA000079).

21. Attached hereto as Exhibit 20 is a true and correct copy of the August 12, 2011 Affidavit of Stephen M. Valvo, filed in *Unkechaug Indian Nation v. Paterson*, 10-CV-711A (W.D.N.Y.), ECF No. 70-19.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: January 29, 2016
New York, NY


Philip Pilmar